

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 17926 of 2004(H)

OS.314/1996 of I ADDL.SUB COURT,TRIVANDRUM
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PETITIONER:

K.T.THOMAS, (JR), S/O.K.I.THOMAS,
AGED 49, RESIDING AT KARIMPANAL HOUSE,
KANJIRAPPALLY.

BY ADV. SRI.M.R.ANANDAKUTTAN
SRI.B.SATHIQ

RESPONDENTS:

1. PRATHAP POTHEEN, KULATHUNGAL HOUSE,
KURAVANKONAM, THIRUVANANTHAPURAM.
2. JOSSAMMA CHACKO, KULATHUNGAL HOUSE,
KURAVANKONAM, THIRUVANANTHAPURAM.
3. VIJAYAMMA CHACKO, KULATHUNGAL HOUSE,
KURAVANKONAM, THIRUVANANTHAPURAM.
4. PHILOMINA POTHEEN, W/O.LATE MOHAN
POTHEEN, OF DO. DO.
5. PUSHPA MOHAN, D/O.PHILOMINA MOHAN
OF DO. DO. DO.
6. SUJA MOHAN, OF DO. DO.
7. SANTHA MOHAN, OF DO. DO.
8. DEVI MOHAN OF DO. DO.
9. PANCHAMI MOHAN OF DO. DO.
10. RAJAMMA POTHEEN AGED ABOUT 50,
OF DO. DO.

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11. AZAF POTHEN S/O. HARI POTHEN,
AGED 30, OF DO. DO.
12. AJAY POTHEN, S/O. HARI POTHEN, AGED
ABOUT 28, DO. DO.
13. SUPRIYA POTHEN, D/O. HARI POTHEN,
AGED 26, DO. DO.
14. AJITHA POTHEN, D/O. HARI POTHEN,
AGED 24, DO. DO.
15. M/S. KULATHUNKAL MOTOR CORPORATION,
REPRESENTED BY ITS MANAGING PARTNER,
11TH RESPONDENT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COY OF ORDER DT.22.5.04 IN IA NO.1621/04 IN OS NO.293/96 OF I
ADDL.SUB JUDGE, THIRUVANANTHAPURAM.

EXT.P2 : TRUE COPY OF ORDER DT.22.5.04 IN IA NO.1623/04 IN OS NO.314/96 OF
THE I ADDL. SUB JUDGE, THIRUVANANTHAPURAM.

EXT.P3 : TRUE COPY OF ORDER DT.22.5.04 IN IA NO.1624/04 IN OS NO.314/96 OF
THE I ADDL. SUB JUDGE, THIRUVANANTHAPURAM.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 17926 OF 2004

Dated this the 7th day of June, 2007

JUDGMENT

Even though service is complete, there is no appearance for the respondents. This Writ Petition under Article 227 of the Constitution is instituted by the plaintiff in a suit for recovery of money. At the fag end of trial, two applications IA No.1623 of 2004 and 1624 of 2004 were filed by the petitioners. IA No.1623 of 2004 was filed under Order XIII Rule 10 CPC calling for records in OS No.20 of 1975 from the Sub Court, Kottayam transferred to the Sub Court, Thiruvananthapuram for execution. Another suit, OS No.293 of 1996 filed by another person was being tried along with the suit filed by the petitioners. In that suit also similar applications were filed and the court dismissed the applications under Order XIII Rule 10 filed in OS No.293 of 1996 mainly on the ground of delay taking the view that the object behind filing of the applications at the fag end of trial is only to protract the trial. Considering Ext.P1 order the learned Sub Judge dismissed the applications filed by the petitioners in their suit also by Exts.P2 and P3 orders. It is Exts.P2 and P3 orders which are impugned in this Writ Petition. Rule 10 of Order XIII will enable the court either on its own motion or in its discretion upon the application of any of the parties to a

suit to send for, either from its own records or from any other Court, the record of any other suit or proceeding and to inspect the records and to rely on such inspection for the purpose of taking a decision in the suit. But then Clause 2 of Rule 10 of Order XIII mandates that the application has to be supported by an affidavit showing how the record is material to the suit in which the application is made and why the applicant cannot without reasonable delay or expense obtain duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original itself is necessary for that purpose.

2. On hearing the learned counsel for the petitioner, I am convinced that some of the records in OS No.20 of 1975 may be of some relevance in adjudicating the issues which have been raised in the suit on the basis of the contentions raised by the defendants. But I do not find any explanation in the affidavit in support of the application as to why the petitioners could not obtain authenticated copies of the records. I also notice that the details of the records which are to be called for are also not disclosed in the affidavit. But then these are not the reasons on which the applications were dismissed by the learned judge. The applications were dismissed on the reason of delay. But the learned Subordinate Judge does not say in the orders that the records called for by the petitioners are not relevant for deciding the issues. That being

the position, the learned Subordinate Judge could have allowed the applications imposing very heavy cost on the petitioner.

3. While admitting this Writ Petition, the trial of the suit was adjourned for two weeks by this Court. The order of adjournment is being continued till date. Even though objections were filed by the respondents in the court below, in this court the respondent have not even entered appearance. Since affidavit is lacking in details as to which all records in OS No.21 of 1975 are relevant for the purpose of the suit, even as I set aside Exts.P2 and P3, I am not inclined to allow the applications filed by the petitioner as prayed for. Instead, I direct the petitioners to apply for certified copies of all relevant records from the Court which is presently in custody of those records and produce such certified copies before the trial court. If the petitioners produce certified copies of the relevant records in OS No. 20 of 1975 before the Trial Court, within two months of their receiving copy of this judgment, the trial court will review the order closing the evidence and post the case again for evidence and permit the petitioners to produce the certified copies and mark them in evidence by recalling their principal witness for that purpose. The court which is presently in custody of the records in OS No.20 of 1975 is directed to treat this judgment as a court diary enabling the petitioners to apply for and obtain certified copies.

Considering the circumstance that there was inordinate delay on the part of the petitioners in making the applications before the court below and that even the applications were supported by inadequate affidavits, I am not inclined to grant reliefs as above to the petitioner except on terms:

The petitioner will be entitled to the benefits of this judgment only if they deposit a sum of Rs.5,000/- before the court below for payment to the contesting defendants in the suit and also pay a sum of Rs.2,500/- to the High Court Legal Services Committee. Deposit and payment as directed above shall be made by the petitioner within three weeks from today, failing which the impugned orders will stand confirmed and the writ petition will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

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